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44596 7590 12/30/2009 DR. MARK M. FRIEDMAN C/O BILL POLKINGHORN - DISCOVERY DISPATCH 9003 FLORIN WAY UPPER MERLBORO, MD 20772				
EXAMINER GEBREMICHAEL, DRUK A				
ART UNIT 3715		PAPER NUMBER		
NOTIFICATION DATE 12/30/2009		DELIVERY MODE ELECTRONIC		

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

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Office Action Summary

Application No.

10/541,557

Applicant(s)

ELFANBAUM, SHLOMO

Examiner

BRUK A. GEBREMICHAEL

Art Unit

3715

Period for Reply -- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 08 September 2009.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 18-28 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 18-28 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/SI/22)
- Paper No(s)/Mail Date _____

- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date _____
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: _____

DETAILED ACTION

1. The following office action is a **Final Office Action** in response to communications received on 09/08/2009. Claims 18-24 have been amended, and claims 1-17 have been canceled. Thus, claims 18-28 are pending in this application.

Response to Amendment

2. Applicant's amendment to claim 18 is sufficient to overcome the 35 U.S.C 101 rejection set forth in the previous office action regarding claims 18-28. Accordingly, the Examiner withdraws the rejection.

Claim Objections

3. Claim 18 is objected to because of the following informalities: the phrase "so as convert the emotional feeling" in line 15 of this claim is believed to be a typographical error for -- so as to convert the emotional feeling --. Appropriate correction is required.

Claim Rejections - 35 USC § 112

4. The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

- Claims 18-28 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention.

Claim 1 recites, "first algorithm including a personal user learning mechanism for reducing bias inherent in the emotional-profile data received from the patient based during prior usage of said computer by the patient". However, the current disclosure does not describe whether the first algorithm includes such "personal user learning mechanism". The disclosure merely mentions that the system will contain a personal user learning mechanism based on the user's use of the device (e.g. see page 9 of Applicant's specification). In addition, the current disclosure appears to be completely silent regarding the functional limitation recited in the above claims regarding this "personal user learning mechanism". Furthermore, the current invention is described with respect to a "user", but not with respect to a "patient" as recited in the current claims.

Claim Rejections - 35 USC § 112

5. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

- Claims 18-28 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claim 18 recites the limitation "said emotional data" in line 4 of the claim. There is insufficient antecedent basis for this limitation in the claim, since it is not clear whether this limitation is referring to the "emotional-profile data" recited in line 3 of the same claim.

Claim Rejections - 35 USC § 103

6. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

- Claims 18-20, 22, 24 and 27-28 are rejected under 35 U.S.C. 103(a) as being unpatentable over Snyder 4,931,934 in view of Lonski 6,338,039.

Regarding claim 18, Snyder discloses the following claimed limitations, a self administered computer-aided method for improving a patient's emotional state (col.2, lines 5-9) comprising receiving emotional-profile data from the patient by way of a computer, said emotional data including attributes of emotion perceived by the patient as influencing his general emotional state (col.3, lines 24-28 and col.4, lines 29-34), a weighting factor for each of said attributes of emotion perceived by the patient as representing a degree of influence on his general emotional state (col.4, lines 48-53), receiving from the patient by way of a computer an emotion feeling input representing an emotional feeling of the patient at a particular moment (col.5, lines 8-15), applying a first algorithm by a way of a computer to the emotional profile data so as convert the emotional feeling into a happiness-index, said first algorithm including a personal user learning mechanism for reducing bias inherent in the emotional-profile data received from the patient based during prior usage of said computer by the patient (see col.6, lines 13-27) .

Snyder does not explicitly disclose, presenting by way of a computer a recommended course of action for the improvement of the patient's emotional state by applying a second algorithm to said happiness-index, said second algorithm being configured to present said recommended course of action based on at least one database of treatment options associated with emotional data.

However, Lonski discloses an invention for collecting patient information and generating treatment plans that teaches, presenting by way of a computer a recommended course of action for the improvement of the patient's emotional state by applying a second algorithm to said happiness-index (see col.6, lines 38-47 and col.7, lines 19-25), said second algorithm being configured to present said recommended course of action based on at least one database of treatment options associated with emotional data (col.8, lines 66-67 and col.9, lines 1-5, and lines 18-23).

Therefore, it would have been obvious to one of ordinary skill in the art at the time of the invention was made to modify the invention of Snyder in view of Lonski by incorporating algorithms used to formulate Treatment Plans (Lonski col.7, lines 19-25) in order to efficiently generate the best treatment plan to a given patient based on his/her collected data so that the system would increase the patient's chance for improvement.

Snyder in view of Lonski teaches the claimed limitations as discussed above. Snyder further discloses,

Regarding claim 19, receiving attribute of emotion includes receiving said attributes of emotion as a written input (col.3, lines 28-34),

Regarding claim 20, receiving attribute of emotion includes receiving said attribute of emotion as a written input selected from a written list of emotional attributes (col.4, lines 29-41),

Regarding claim 22, the happiness-index is expressed in terms of a visual representation of rating enabling comparison to other generated happiness- indexes (col.6, lines 3-17),

Regarding claim 24, providing a recommendation includes providing said recommendation drawn from a data base containing an emotional profile similar to that of the patient (col.9, lines 52-56).

Therefore, it would have been obvious to one of ordinary skill in the art at the time of the invention was made to modify the invention of Snyder in view of Lonski by incorporating a history database in order to store information related to patients' behavior data and corresponding treatment options so that the system would efficiently retrieve the best treatment plan for a particular patient by comparing the given data of the patient with the stored information, thereby saving time and resources for the patient and/or caregiver.

Snyder in view of Lonski teaches the claimed limitations as discussed above. Snyder further discloses,

Regarding claim 27, receiving updated attributes of emotion and associated weighting factors to be used by said algorithm in future happiness-index calculations (col.5, lines 44-56 and FIG 5),

Regarding claim 28, storing the inputted attributes of emotion, said associated weighting factors, said inputted emotional feeling and said recommendations into a collective emotional-profile data bank for the sake of improving future recommendations (col.5, lines 24-30 and col.6, lines 21-27).

- Claims 21 and 23 are rejected under 35 U.S.C. 103(a) as being unpatentable over Snyder 4,931,934 in view of Lonski 6,338,039 and further in view of Shovers 5,696,981.

Regarding claim 21, Snyder in view of Lonski teaches the claimed limitations as discussed above.

Snyder in view of Lonski does not explicitly teach, receiving attribute of emotion includes receiving said attribute of emotion as a verbal input.

However, Shovers teaches, receiving attribute of emotion includes receiving said attribute of emotion as a verbal input (col.6, lines 58-65).

Therefore, it would have been obvious to one of ordinary skill in the art at the time of the claimed invention was made to modify the invention of Snyder in view of Lonski and further in view of Shovers by including a microphone as an input interface in order to allow the user to input data into the system by speaking into the microphone so that the necessary data would be collected more efficiently.

Regarding claim 23, Snyder in view of Lonski teaches the claimed limitations as discussed above.

Snyder further discloses, representation of rating is expressed in terms of an visual presentation (col.5, lines 10-19).

Snyder in view of Lonski does not explicitly teach, the representation of rating is expressed in terms of an audiovisual presentation

However, Shovers teaches, representation of rating is expressed in terms of an audiovisual presentation (col.6, lines 6-14 and lines 58-65).

Therefore, as already indicated above, it would have been obvious to one of ordinary skill in the art at the time of the claimed invention was made to modify the invention of Snyder in view of Lonski and further in view Shovers by including a microphone as an input interface in order to allow the user to input data into the system by speaking into the microphone so that the necessary data would be collected more efficiently.

- Claims 25 and 26 are rejected under 35 U.S.C. 103(a) as being unpatentable over Snyder 4,931,934 in view of Lonski 6,338,039 and further in view of Bair 6,108,665

Regarding claims 25 and 26, Snyder in view of Lonski teaches the claimed limitations as discussed above.

Snyder in view of Lonski does not explicitly teach, providing a recommendation includes providing an interactive communications link to a qualified psychological professional who provides said recommendation; providing a recommendation includes providing an interactive communications link to a group of individuals that provides support and assistance.

However, Bair teaches, providing a recommendation includes providing an interactive communications link to a qualified psychological professional who provides said recommendation (col.3, lines 3-10 and col.10, lines 37-47); providing a

recommendation includes providing an interactive communications link to a group of individuals that provides support and assistance (see e.g. col.1, lines 7-11 and col.3, lines 50-55).

Therefore, it would have been obvious to one of ordinary skill in the art at the time of the claimed invention was made to modify the invention of Snyder in view of Lonski and further in view of Bair by incorporating a sufficiently large database in order to evaluate and compare the patient's behavioral problems with the norms and display the treatment goals; and also by communicating with a health care worker such as a psychiatrist via the internet in order to conduct further evaluation of the patient's data and provide the most up-to-date treatment option.

Response to Arguments.

7. Applicant's arguments filed on 09/08/2009 have been fully considered but they are not persuasive. In the remarks, Applicant argues that,

(1) The Examiner's rejection is respectfully traversed; however, for the sake of expediting the prosecution Applicant has amended independent claim 18 by adding the claim limitation of: "... said first algorithm including a personal user learning mechanism for reducing bias inherent in the emotional-profile data received from the patient based during prior usage of said computer by the patient..." ...

... Applicant respectfully brings the Examiner's attention to the system described by Snyder as being directed for "measuring emotional response that reliably produces objective and predictive data regarding human behavior" (column 2, lines 6-9). Lonski

teaches a system directed at generating a treatment plan generated from data carefully selected by medical care professionals as stated in Column 5, lines 11-13: "...the caregiver will select an emotional issue which the caregiver deems is a relevant stimulus or precipitant to the problem..." (Emphasis added) . . .

- In response to argument (1), the Examiner respectfully disagrees. Snyder's reference already teaches or suggests such a user learning mechanism utilized to minimize the bias due to profile data received from the patient during prior usage of the computer. For example the line, "In step 92 the subject is given the option to **examine current data in light of data accumulated in the past**. Particularly relevant is **past baseline data** which serves as a **statistically normative comparison for the current baseline**. For example, if the baseline intensity for the current most predictive emotion falls significantly outside the norm for that emotion for the subject, then not quite as much confidence can be placed in the actionable information produced" (see e.g. col.6, lines 13-21) clearly suggests such learning mechanism that generates comparison of collected baseline data with respect to a given patient, in order to allow the patient examine the current data in light of data accumulated in the past, so that the patient would readily know his/her emotional behavior status or progress.

Regarding the generation of the treatment plan, first of all, it should be noted that in any computerized system, a physician or an expert in the field (such as a caregiver) should enter data related to symptoms and treatment options before the system is usable. This is because, the computer system by itself would not know in advance what treatment option or identification information to provide to the subject regarding any

symptom(s) unless the expert entered such related information into the system prior to using the system. Therefore, Applicant's assumption that Lonski teaches a system directed to generating a treatment plan generated from data carefully selected by medical care professionals, is not a persuasive argument.

Furthermore, the reference teaches that Lonski's system generates treatment plans automatically. For instance the line, "After completing the Progress Note, the caregiver would likely move on to formulating a **Treatment Plan, which may be done manually or automatically**. A Treatment Plan includes advice of a future or prospective nature for the caregiver. However first a decision must be made to continue or end treatment, items 35 and 30 as shown in FIG. 1 respectively . . . Alternatively, the caregiver may opt to **instruct the method and apparatus to automatically generate the Treatment Plan** (process described below) which is then combined with the "live" data previously entered by the caretaker, **resulting in the "Treatment Plan Note."** With the aid of this information and the Treatment Plan options generated by the method and apparatus as shown in FIG. 8, the caregiver will define a Treatment Plan 40 as shown in FIG. 1 that best fits the present needs of the patient" (col.6, lines 22-28 and lines 38-47) clearly suggests the above fact.

Therefore, the Examiner concludes that Applicant's currently presented claimed features have already been taught or suggested by the prior art.

Conclusion

Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Bruk A. Gebremichael whose telephone number is (571)270-3079. The examiner can normally be reached on Monday to Friday (7:30AM-5:00PM) ALT. Friday OFF.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, THAI XUAN can be reached on (571) 272-7147. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

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